RECENT IMPORTANT DECISIONS

AGENCY—NATURE OF RELATION—DISTINGUISHED FROM LEASE.—A lumber company entered into a contract with B, by the terms of which B was to have a so-called lease of the company's sawmill and timber rights for three years. The rent agreed upon was one dollar, and the net proceeds of the operations. It was also stipulated in the lease that B should account to the company monthly, that he should not dispose of what rights he might acquire by the transaction to third persons, except with the consent of the company, and that in case of his death such rights should not pass to his personal representatives, but should inure to some third person whom he should name. There were other like stipulations restricting B's powers. The lumber company assigned its rights in the contract to the defendant McIntyre, between whom and B it was agreed that B should perform the obligations entered into with the company, and that McIntyre should assume its liabilities thereunder. McIntyre was named by B as his successor in case of death, to all rights under the agreement. In an action for a debt incurred by B in the business against McIntyre, as either the principal or the partner of B, *Held*, that plaintiff should recover. *Petteway* v. *McIntyre* (1902), — N. C. —, 42 S. E. Rep. 853.

The court reasoned that since the company was in actual control of the business, B being so hampered and restricted as to have left little independence, and since it was apparent that the contract was drawn up under the form of a lease to preserve the company from liability for the acts of its nominal lessee, the lumber company must be held as a matter of law to be the principal. Its liabilities were by the assignment transferred to the defendant McIntyre. The name which parties give to a contract will not finally determine its legal effect, *Arbuckle* v. *Kirkpatrick* (1897), 98 Tenn. 221, 39 S. W. 3, 36 L. R. A. 285, 60 Am. St. Rep. 854; Mechem on Sales, secs. 41-49. The court also held that the evidence of the relation being undisputed, the question whether agency exists, is one for the court. *Gulick* v. *Grover*, 33 N. J. L. 463, 97 Am. Dec. 728.

BANKRUPTCY—DISCHARGE—JUDGMENT RECOVERED FOR ALIENATION OF AFFECTIONS.—A wife obtained judgment against another woman for the alienation of the affections of her husband. The judgment debtor was subsequently discharged in bankruptcy. She contended that this judgment was discharged by the bankruptcy proceedings, and brings this action to have it cancelled. *Held*, that the injuries arising from the tort were willful and malicious, and are to the person and property of another within the meaning of sec. 17 of Bankruptcy Law of 1898. *Leicester* v. *Hoadley* (1903), — Kans. —, 71 Pac. Rep. 318.

Sec. 17 of the Bankruptcy Law provides that "a discharge in bankruptcy shall release a bankrupt from all his provable debts except such as . . . (2) are judgments for frauds, or obtaining money under false representations, or for willful and malicious injuries to the person or property of another." The questions before the courts were: (1) Was this a willful and malicious act, and (2) was it against the person or property of another? The court answered both of these questions in the affirmative. The construction of this section of the Bankruptcy Act has not been uniform. In *In re McCauley*, 101 Fed. Rep. 223, a judgment against a seducer for breach of contract of marriage was discharged by bankruptcy, while in *In re Maples*, 105 Fed. Rep. 919, and in *In re Freche*, 109 Fed. Rep. 620, 6 Am. Bankr. Rep. 479, a judgment for damages for seduction was not discharged. So in a judgment for

criminal conversation, the United States district court and the court of appeals of New York, reached different conclusions in the same case. *In re Tinker*, 99 Fed. Rep. 79, 3 Am. Bankr. Rep. 580; *Colwell* v. *Tinker*, 169 N. Y. 531, 7 Am. Bankr. Rep. 334. *Exline* v. *Sargent*, 23 Ohio Cir. Ct. Rep. 180, is authority for the principal case, but no case reported has placed a comprehensive and satisfactory construction on this section of the act, and its purpose is still in doubt.

BANKS AND BANKING—SAVINGS BANKS—PASS BOOKS—PAYMENT TO WRONG PARTY—BY-LAW.—Defendant is a savings bank having over 12,000 depositors, of whom plaintiff was one. The latter accepted a pass book in which were printed defendant's by-laws. These provided that "As the officers of the institution may be unable to identify every depositor transacting business at the bank, the institution will not be responsible for loss sustained when the depositor has not given notice of his book being stolen or lost, if such book be paid in whole or in part on presentment." Defendant made payments, first, to a person who falsely personated the plaintiff; and second, upon orders to which plaintiff's signature was forged, plaintiff's pass book being presented in both cases. Defendant did not have the plaintiff's signature upon any book so that it could be easily and speedily referred to for the purpose of comparison. Plaintiff sues for the amount of payments made to the wrong party and upon the forged orders. *Held*, that he could recover. *Ladd* v. *Augusta Savings Bank* (1902), — Me. —, 52 Atl. Rep. 1012, 58 L. R. A. 288.

The courts agree that such a by-law printed in the pass book does not relieve the officers of the bank from exercising reasonable care and diligence. *Sullivan* v. *Lewiston Inst. for Savings*, 56 Me. 507, 96 Am. Dec. 500; *Gifford* v. *Rutland Savings Bank*, 63 Vt. 108, 11 L. R. A. 794, 21 Atl. 340; *Brown* v. *Merrimack River Savings Bank*, 67 N. H. 549, 39 Atl. 336; *Kummel* v. *Germania Bank*, 127 N. Y. 488, 13 L. R. A. 786, 28 N. E. 398; *Levy* v. *Bank*, 117 Mass. 448. The Massachusetts and Pennsylvania courts, and the early Maine decisions, hold that payment upon presentation of pass book, before notice of its loss, in the absence of such circumstances as would tend to excite suspicion or put a man of ordinary prudence upon inquiry, will satisfy the rule requiring such care and diligence. *Sullivan* v. *Lewiston Inst. for Savings*, *supra*; *Levy* v. *Bank*, *supra*; *Goldbrick* v. *Bank*, 123 Mass. 320; *Burrill* v. *Savings Bank*, 92 Pa. St. 134, 37 Am. Rep. 669. The courts of New York, New Hampshire, Vermont and Connecticut, on the other hand, hold that merely requiring the presentment of the depositor's bank book in order to prove identity, is not the exercise of reasonable care and diligence. *Smith* v. *Bank*, 101 N. Y. 58, 54 Am. Rep. 653, 4 N. E. 123; *Kummel* v. *Bank*, *supra*; *Brown* v. *Bank*, *supra*; *Gifford* v. *Bank*, *supra*; *Eaves* v. *Bank*, 27 Conn. 228, 71 Am. Dec. 59. In the present case the court said that the failure of the defendant to preserve the depositor's signature in some convenient place for the purpose of establishing identity by comparison, was a failure to exercise reasonable care and diligence.

CARRIERS—PASSENGER EJECTED AT WRONG PLACE—SICKNESS CAUSED BY ACT OF CARRIER.—A child, who had not paid fare, in charge of an older person who had done so, was put off two hundred and fifty yards beyond his station, thereby causing sickness. In an action for damages, *Held*, that he was a passenger, but may not recover for the sickness caused by being put off at the wrong place. *Rawlings* v. *Wabash R. R.* (1903), — Mo. App. —, 71 S. W. Rep. 534.